

Senate Bill 279

By: Senator Jordan of the 6th

A BILL TO BE ENTITLED  
AN ACT

To amend Chapter 9 of Title 31 of the Official Code of Georgia Annotated, relating to consent for surgical or medical treatment, so as to prohibit pelvic examinations on an anesthetized or unconscious female patient without consent or a court order except in cases of emergency; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Chapter 9 of Title 31 of the Official Code of Georgia Annotated, relating to consent for surgical or medical treatment, is amended by revising Code Section 31-9-6.1, relating to disclosure of certain information to persons undergoing certain surgical or diagnostic procedures, as follows:

"31-9-6.1.

(a) Except as otherwise provided in this Code section, any person who undergoes any surgical procedure under general anesthesia, spinal anesthesia, or major regional anesthesia or any person who undergoes an amniocentesis diagnostic procedure or a diagnostic procedure which involves the intravenous or intraductal injection of a contrast material must consent to such procedure and shall be informed in general terms of the following:

(1) A diagnosis of the patient's condition requiring such proposed surgical or diagnostic procedure;

(2) The nature and purpose of such proposed surgical or diagnostic procedure;

(3) The material risks generally recognized and accepted by reasonably prudent physicians of infection, allergic reaction, severe loss of blood, loss or loss of function of any limb or organ, paralysis or partial paralysis, paraplegia or quadriplegia, disfiguring scar, brain damage, cardiac arrest, or death involved in such proposed surgical or diagnostic procedure which, if disclosed to a reasonably prudent person in the patient's position, could reasonably be expected to cause such prudent person to decline such

proposed surgical or diagnostic procedure on the basis of the material risk of injury that could result from such proposed surgical or diagnostic procedure;

(4) The likelihood of success of such proposed surgical or diagnostic procedure;

(5) The practical alternatives to such proposed surgical or diagnostic procedure which are generally recognized and accepted by reasonably prudent physicians; and

(6) The prognosis of the patient's condition if such proposed surgical or diagnostic procedure is rejected.

(b)(1) If a consent to a surgical or diagnostic procedure is required to be obtained under this Code section and such consent is not obtained in writing in accordance with the requirements of this Code section, then no presumption shall arise as to the validity of such consent.

(2) If a consent to a diagnostic or surgical procedure is required to be obtained under this Code section and such consent discloses in general terms the information required in subsection (a) of this Code section, is duly evidenced in writing, and is signed by the patient or other person or persons authorized to consent pursuant to the terms of this chapter, then such consent shall be rebuttably presumed to be a valid consent.

(c) In situations where a consent to a surgical or diagnostic procedure is required under this Code section, it shall be the responsibility of the responsible physician to ensure that the information required by subsection (a) of this Code section is disclosed and that the consent provided for in this Code section is obtained. The information provided for in this Code section may be disclosed through the use of video tapes, audio tapes, pamphlets, booklets, or other means of communication or through conversations with nurses, physician assistants, trained counselors, patient educators, or other similar persons known by the responsible physician to be knowledgeable and capable of communicating such information; provided, however, that for the purposes of this Code section only, if any employee of a hospital or ambulatory surgical treatment center participates in any such conversations at the request of the responsible physician, such employee shall be considered for such purposes to be solely the agent of the responsible physician.

(d) A failure to comply with the requirements of this Code section shall not constitute a separate cause of action but may give rise to an action for medical malpractice as defined in Code Section 9-3-70 and as governed by other provisions of this Code relating to such actions; and any such action shall be brought against the responsible physician or any hospital, ambulatory surgical treatment center, professional corporation, or partnership of which the responsible physician is an employee or partner and which is responsible for such physician's acts, or both, upon a showing:

(1) That the patient suffered an injury which was proximately caused by the surgical or diagnostic procedure;

(2) That information concerning the injury suffered was not disclosed as required by this Code section; and

(3) That a reasonably prudent patient would have refused the surgical or diagnostic procedure or would have chosen a practical alternative to such proposed surgical or diagnostic procedure if such information had been disclosed;

provided, however, that, as to an allegation of negligence for failure to comply with the requirements of this Code section, the expert's affidavit required by Code Section 9-11-9.1 shall set forth that the patient suffered an injury which was proximately caused by the surgical or diagnostic procedure and that such injury was a material risk required to be disclosed under this Code section.

(e) The disclosure of information and the consent provided for in this Code section shall not be required if:

(1) An emergency exists as defined in Code Section 31-9-3;

(2) The surgical or diagnostic procedure is generally recognized by reasonably prudent physicians to be a procedure which does not involve a material risk to the patient involved;

(3) A patient or other person or persons authorized to give consent pursuant to this chapter make a request in writing that the information provided for in this Code section not be disclosed;

(4) A prior consent, within 30 days of the surgical or diagnostic procedure, complying with the requirements of this Code section to the surgical or diagnostic procedure has been obtained as a part of a course of treatment for the patient's condition; provided, however, that if such consent is obtained in conjunction with the admission of the patient to a hospital for the performance of such procedure, the consent shall be valid for a period of 30 days from the date of admission or for the period of time the person is confined in the hospital for that purpose, whichever is greater; or

(5) The surgical or diagnostic procedure was unforeseen or was not known to be needed at the time consent was obtained, and the patient has consented to allow the responsible physician to make the decision concerning such procedure.

(f) A prior consent to surgical or diagnostic procedures obtained pursuant to the provisions of this Code section shall be deemed to be valid consent for the responsible physician and all medical personnel under the direct supervision and control of the responsible physician in the performance of such surgical or diagnostic procedure and for all other medical personnel otherwise involved in the course of treatment of the patient's condition.

(g) A responsible physician shall not perform a pelvic examination on an anesthetized or unconscious female patient unless the patient, or a person authorized to consent for the patient, gives informed consent to such examination, the performance of such examination

101 is within the scope of care ordered for the patient, and such examination is medically  
102 necessary for diagnosis or treatment purposes, or a court has ordered the performance of  
103 a pelvic examination for the purposes of evidence collection; provided, however, that  
104 informed consent shall not be required pursuant to this subsection in the event of an  
105 emergency, as defined in Code Section 31-9-3.

106 ~~(g)~~(h) The Georgia Composite Medical Board shall be required to adopt and have the  
107 authority to promulgate rules and regulations governing and establishing the standards  
108 necessary to implement this chapter specifically including but not limited to the  
109 disciplining of a physician who fails to comply with this Code section.

110 ~~(h)~~(i) As used in this Code section, the term 'responsible physician' means the physician  
111 who performs the procedure or the physician under whose direct orders the procedure is  
112 performed by a nonphysician."

## 113 **SECTION 2.**

114 All laws and parts of laws in conflict with this Act are repealed.